

APPEAL NO. 021323  
FILED JULY 3, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 30 2002. The hearing officer made the following findings of fact:

**FINDINGS OF FACT**

3. [Appellant] Claimant sustained damage to the physical structure of her body occurring as a result of repetitious, physically traumatic activities that occurred over time and arose out of and in the course and scope of her employment with the Employer.
4. On \_\_\_\_\_ Claimant gave the Employer first notice of the claimed injury.
5. Prior to \_\_\_\_\_ neither the Employer, nor any employee of the Employer who held a supervisory or management position, nor the [Respondent] Carrier had actual knowledge of the claimed injury.
6. Good cause does not and did not exist for Claimant's failure to provide notice in a timely manner.
7. On \_\_\_\_\_ Claimant first knew or reasonably should have known her problems with her left shoulder may have been related to her employment with the Employer.
8. Due to the claimed injury, Claimant was unable to obtain or retain employment at wages equivalent to her preinjury wage from July 24, 2001 through the date of this hearing.

Because the hearing officer found that the claimant gave notice to her employer of her injury more than 30 days after the date of injury without good cause, the hearing officer reached the following conclusions of law:

**CONCLUSIONS OF LAW**

2. The Carrier is relieved from liability under Texas Labor Code Section 409.002, because the Claimant failed to timely notify the Employer pursuant to Section 409.001.

3. Because the Carrier is relieved from liability under Section 409.002 of the Act, Claimant did not sustain a compensable repetitive trauma injury.
4. Because the Claimant did not sustain a compensable injury, Claimant did not have disability.

The claimant appeals the hearing officer's notice determination on sufficiency of the evidence grounds, as well as the resulting injury and disability determinations. The carrier urges affirmance.

## DECISION

Affirmed.

The claimant attached new evidence to her appeal which would purportedly show that she first knew her injury was work-related on \_\_\_\_\_, and that her notice was, therefore, timely. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See *generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence offered is not so material that it would probably produce a different result. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The hearing officer did not err in determining that the carrier is relieved from liability under Section 409.002, because the Claimant failed to timely notify her employer of the injury, pursuant to Section 409.001. This determination involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's notice determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Because the carrier is relieved from liability under Section 409.002, the hearing officer properly concluded that the claimant did not sustain a *compensable* repetitive trauma injury. Similarly, because the claimant did not sustain a compensable injury, the hearing officer correctly concluded that the claimant did not have disability. Section 401.011(16).

The decision and order of the hearing officer are affirmed.

The true corporate name of the carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

---

Philip F. O'Neill  
Appeals Judge

CONCUR:

---

Elaine M. Chaney  
Appeals Judge

---

Robert W. Potts  
Appeals Judge